

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

:Date of Decision: 28.6.99

OA .No132/93

Mr.M.T..Rathod

Petitioners

Mr. B.B.Gogia

: Advocate for the petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr..N. S.Shevde

: Advocate for the respondent(s)

CORAM

Hon'ble Mr. V. Radhakrishnan

: Member(A)

Hon'ble Mr.P.C.Kannan

: Member(J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Shri M.T.Rathod,
Office Superintendent,
Mechanical Branch,
DRM's Office,
Western Railway,
Rajkot.

: Applicant

Advocate: Mr.B.B.Gogia

Versus

1. Union of India,
Through:
General Manager,
Western Railway,
Churchgate,
Bombay-400 020.

2. Divisional Railway Manager,
Western Railway,
Rajkot Division,
Kothi Compound,
Rajkot.

: Respondents

Advocate: Mr.N.S.Shevde

JUDGMENT
OA/132/93

Date: 28.6.99.

Per: Hon'ble Mr. V.Radhakrishnan

: Member(A)

The applicant who was working as Clerk was promoted as Senior Clerk in the Grade of Rs.330-560 and his pay as Senior Clerk was fixed at Rs.392/- per month. However, he alleges that his junior One Shri P.R.Kulkarni was allowed to officiate as Senior Clerk and posted to Wankaner Shed. Accordingly, while the applicant's pay was fixed at Rs.392/- as on 24.8.74 ,his junior Shri Kulkarni's pay was fixed at Rs.404/- as on 1.12.74 and after that the applicant was drawing Rs.404/- as on 1.8.75 and Shri Kulkarni was drawing Rs.416/- as on 1.12.75 .Hence,

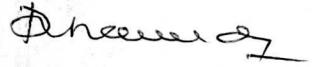
his grievance is that his pay should not have been fixed less than that of his junior. Hence, he prays for the following reliefs:

- " A) It may be decided that the decision conveyed to the applicant vide Respondent NO.2's letter No.ED/M/76 dated 27.7.1992, rejecting his request to step up his pay to the figure of his junior Shri P.R.Kulkarni is illegal, ineffective, arbitrary, mechanical, null and void and it may be declared that the applicant is entitled to have his pay stepped up to the figure of his junior Shri P.R.Kulkarni from the date anomaly took place and the applicant is entitled to be paid all the arrears of pay flowing from the refixation of pay.
- B) Any other better relief or reliefs as this Hon'ble Tribunal may deem just and proper looking to the circumstances of the case may please be granted to the applicant.
- C) The cost of the application may kindly be granted to the applicant from the respondents."

The respondents have contested the application and filed their reply. They have stated that the junior to the applicant Shri Kulkarni had already officiated earlier as Senior Clerk from 5.12.1970. Hence, on his promotion his pay was fixed with reference to his earlier service as Senior Clerk. As the applicant had not officiated in the post of as Senior Clerk earlier, his pay was fixed at the minimum and his pay was fixed as per rules. They have stated that the case of the applicant does not come within the provisions contained in the rules namely F.R. 22-C [Railway Rules 2018 (B)] As per rules, the anomaly should be as a result of direct application of F.R. 22-C and then only the affected employee can claim stepping up of pay. The Hon'ble Supreme Court has ruled in Union of India vs. R.Swaminathan and Ors. 1997 (7) SCC 690 that there can be no relief if the higher pay was fixed for the juniors not because of any promotion under FR 22 but because of an earlier adhoc promotion given to his juniors for certain periods. The Hon'ble Supreme Court observed as:

"The memorandum makes it clear that in such instances of junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay."

The same principles has been reiterated by the Hon'ble Supreme Court in Union of India and Ors. vs. M.Suryanarayana Rao SLJ 1999(2) page 79 that unless the conditions for stepping up not fulfilled, the stepping up of pay for the senior cannot be admitted. In view of the clear position in the above two cases and as the conditions referred in FR 22 -C are not satisfied with the present case, the application is devoid of merits and accordingly the same is dismissed. No costs.


(P.C.Kannan)
Member(J)


(V.Radhakrishnan)
Member(A)

aab

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

041132193

of 19

Transfer application No.

Old Write Pet. No.

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated: 08/07/99

Countersigned.

Section Officer/Court Officer.

PO/12847

Signature of the Dealing Assistant.

MGIPRRND—17 CAT/86—T. S. App.—30-10-1986—150 Pads,

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE

OM/132/93

NAME OF THE PARTIES Mr. M.T. Rathod

VERSUS

602 803

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